



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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Fourth District, Los Angeles

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State Controller, Sacramento

JAMES E. SPEED  
Executive Director

**\*See Interested Parties List Attached\***

April 30, 2003

Dear Interested Party:

An interested parties meeting was held April 7, 2003, to discuss proposed amendments to Regulation 1616, *Federal Areas*, regarding sales by Indian retailers on Indian reservations. The proposed amendments discussed at that meeting are set forth in the enclosed Notice of Proposed Regulatory Action by the State Board of Equalization to Amend Sales and Use Tax Regulation 1616, *Federal Areas*, with text of the proposed amendments. Please note that the public hearing originally scheduled for February 5, 2003, was postponed so that this meeting could take place before the public hearing.

At the April 7, 2003 meeting, interested parties in attendance commented upon the specific provisions of the proposed regulatory action, as itemized in the enclosed Agenda for Meeting of Interested Parties, and also commented on other issues regarding the concept of "reservation-based value." The staff discussed the effect of the requirements of the Administrative Procedure Act (Govt. Code, § 11340 et. seq.; "APA") on this rulemaking proceeding. The APA requires the Board to demonstrate that the proposed regulatory amendments are both necessary and authorized (the necessity and authority requirements). (Govt. Code, § 11349(a)<sup>1</sup> and (b)<sup>2</sup>; see Rev. & Tax. Code, § 6352.<sup>3</sup>) In addition, the proposed

<sup>1</sup> Government Code section 11349(a) defines "necessity" to mean "the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion."

Title 1, Calif. Code Reg., § 10, in part, further explains necessity by stating that the record of the rulemaking proceeding shall include "[a] statement of the specific purpose of each adoption, amendment, or repeal..."

<sup>2</sup> Government Code section 11349(b) defines "authority" to mean "the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation."

<sup>3</sup> Revenue and Taxation Code section 6352 provides: "There are exempted from the taxes imposed by this part the gross receipts from the sale of and the storage, use, or other consumption in this State of tangible personal property

regulatory amendments must be clear and consistent with statutes, court decisions, and other provisions of law (the clarity and consistency requirements). (Govt. Code, § 11349(c)<sup>4</sup> and (d).<sup>5</sup>)

Under the APA, the public hearing must be held no sooner than 45 days after notice of publication of the proposed amendments. (Govt. Code, § 11346.4(a).) The rulemaking file must be submitted to the Office of Administrative Law for approval within one year of the notice of publication, in this case, by December 19, 2003. (See Govt. Code, § 11346.4(b).) Notice of publication of the proposed amendments occurred on December 20, 2002, so public hearing on the proposed amendments must occur within sufficient time for the rulemaking file to be prepared and submitted to the Office of Administrative Law under the applicable provisions of the APA.

Prior to public hearing on the proposed regulatory action, interested parties are invited to submit written comments. Specifically, staff would welcome written comments which provide substantive authority for the submitted regulatory proposals, and specific examples. Interested parties may wish to provide new or revised proposals for regulatory amendments. We note that at the interested parties meeting, new proposals regarding a potential exemption from the obligation to collect tax for on-reservation sales of tangible personal property with “tribal logos” for non-gaming tribes, and regarding sales of tangible personal property with reservation-based value were discussed.

We request that written submissions address the requirements that regulatory amendments must fulfill in order to be approved by Office of Administrative Law (Govt. Code, § 11349.1 et seq.), i.e., the standards of necessity, authority, clarity and consistency, as discussed above. If the substantive authority cited is the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701-2721 or other federal law, we further request that the parties include a discussion of relevant cases interpreting such law. If the substantive authority cited is case law, please specifically discuss how each case supports your position that California may not impose a use tax collection obligation on the transaction.

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the gross receipts from the sale of which, or the storage, use, or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States of the under the Constitution of the State.”

<sup>4</sup> Government Code section 11349(c) defines “clarity” to mean “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

Title 1, Calif. Code Reg., § 16 further explains clarity. Subdivision (a) provides in pertinent part that “[a] regulation shall be presumed not to comply with the ‘clarity’ standard if any of the following conditions exists: (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning...(3) the regulation uses terms which do not have meanings generally familiar to those ‘directly affected’ by the regulation, and those terms are defined neither in the regulation nor in the governing statute...”

<sup>5</sup> Government Code section 11349(d) defines “consistency” to mean “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.”

The written comments submitted by interested parties will be promptly reviewed by Board staff in order to provide a recommendation to the Board for the appropriate next step or steps in the regulatory process. Please provide written comments to:

Ms. Diane Olson, Regulations Coordinator

Fax number: (916) 324-3984 or

E-mail: Diane.Olson@boe.ca.gov or

Mail: State Board of Equalization, Attention: Diane Olson, MIC:80, at the above address.

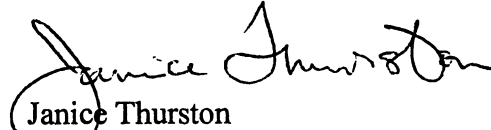
We would appreciate receiving your written comments as soon as possible.

If you are aware of other persons that may be interested in presenting written comments, please feel free to provide them with a copy of this letter and the enclosed material.

Please be aware that a copy of the material you submit may be provided to other interested parties and will become part of the rulemaking file submitted to the Office of Administrative Law as a part of the regulation approval process. Therefore, please ensure your comments do not contain confidential information.

We look forward to receiving your written comments.

Sincerely,



Janice Thurston  
Assistant Chief Counsel  
Business Taxes, Legal Department

JT:bb

Enclosures

cc: (all with enclosures)  
Honorable Carole Migden, Chairwoman  
Honorable Claude Parrish, Vice Chairman  
Honorable Bill Leonard, Member, Second District (MIC 78)  
Honorable John Chiang, Member, Fourth District  
Honorable Steve Westly, State Controller  
Ms. Carole Ruwart, Board Member's Office, First District (MIC 71)  
Ms. Sabina Crocette, Board Member's Office, First District (via e-mail)  
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)  
Mr. Romeo Vinzon, Board Member's Office, Third District  
Mr. Matthew Zylowski, Board Member's Office, Third District  
Ms. Margaret Pennington, Board Member's Office, Second District (MIC 78)  
Mr. Lee Williams, Board Member's Office, Second District (MIC 78)  
Mr. Tim Treichelt, Board Member's Office, Second District (via e-mail)  
Mr. John Thiella, Board Member's Office, Fourth District (MIC 72)  
Ms. Marcy Jo Mandel, State Controller's Office  
Mr. James E. Speed (MIC 73)  
Mr. Timothy Boyer (MIC 83)  
Mr. Ramon J. Hirsig (MIC 43)  
Ms. Janice Thurston (MIC 82)  
Mr. Warren Astleford (MIC 82)  
Ms. Carla Caruso (MIC 82)  
Ms. Jean Ogrod (via e-mail)  
Mr. Jeff Vest (via e-mail)  
Mr. David Levine (MIC 85)  
Mr. Steve Ryan (via e-mail)  
Ms. Jennifer Willis (MIC 70)  
Mr. Dave Hayes (MIC 67)  
Mr. Joseph Young (via e-mail)  
Ms. Diane Olson (MIC 80)  
Mr. Vic Anderson (MIC 40 and via e-mail)  
Mr. Larry Bergkamp (via e-mail)  
Mr. Geoffrey E. Lyle (MIC 50)  
Ms. Laureen Simpson (MIC 50)  
Ms. Leila Khabbaz (MIC 50)  
Ms. Mariflor Jimenez (MIC 50)

**Agenda for Meeting of Interested Parties for  
Discussion of Proposed Amendments  
(Regulation 1616(d), Federal Areas, Indian Reservations)  
April 7, 2003**

**Welcome and Introductions (10:00 – 10:15)**

**Discussion of Proposed Amendments (10:15 - 11:30)**

ITEM	PROPOSED AMENDMENT	REGULATION SUBDIVISION		PAGE #
A	"Except as exempted below, <u>or as expressly preempted by federal statute, regulation or policy</u> , Indian retailers are required to collect use tax from such purchasers and must register with the Board for that purpose."	1616(d)(3)(A)2.	<ul style="list-style-type: none"> <li>• "...expressly preempted by federal statute, regulation or policy..."</li> </ul>	6
B	"Indian retailers are not required to collect use tax on the sale of tangible personal property sold on a reservation, without regard to the origin of such tangible personal property, if the tangible personal property is intended for use in on-reservation gaming activities, or to advertise or promote patronage of a tribal gaming facility through the display of the facility's or the tribe's name, logo, or other identifying information."	1616(d)(3)(A)2.b	<ul style="list-style-type: none"> <li>• "...tangible personal property... intended for use in on-reservation gaming activities..."</li> <li>• "tangible personal property...intended to advertise or to promote patronage of a tribal gaming facility through the display of the facility's or the tribe's name, logo or other identifying information."</li> </ul>	6
C	Indian tribes/Indian retailers are not required to collect use tax on the sale of tangible personal property sold on a reservation if the property a) is made from raw materials produced on the reservation, b) reflects or illustrates tribal history, culture or tradition, c) is intended for use in an on-reservation activity, or d) is not generally available for purchase outside of a reservation.	1616(d)(3)(A)2.c	<ul style="list-style-type: none"> <li>• "a) ...made from raw materials produced on the reservation..."</li> <li>• "b) reflects or illustrates tribal history, culture or tradition..."</li> <li>• "c)...intended for use in an on-reservation activity..."</li> <li>• "d) ... not generally available for purchase outside of a reservation."</li> </ul>	7

**Summary (11:30-11:45)**

**Agenda for Meeting of Interested Parties for  
Discussion of Proposed Amendments  
(Regulation 1616(d), Federal Areas, Indian Reservations)  
April 7, 2003**

\* Mail comments to: Ms. Diane Olson, Regulations Coordinator  
Board of Equalization  
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Sacramento, CA 94279-0092  
Fax (916) 322-3984  
e-mail: [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov)

Staff Contact: Ms. Carla J. Caruso, Senior Tax Counsel  
Telephone (916) 324-2816  
e-mail: [Carla.Caruso@boe.ca.gov](mailto:Carla.Caruso@boe.ca.gov)  
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STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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KATHLEEN CONNELL  
State Controller, Sacramento

JAMES E. SPEED  
Executive Director

December 20, 2002

TO INTERESTED PARTIES:

NOTICE OF PROPOSED REGULATORY ACTION  
BY THE  
STATE BOARD OF EQUALIZATION

AMEND SALES AND USE TAX REGULATION 1616, FEDERAL AREAS

PUBLIC HEARING: WEDNESDAY, FEBRUARY 5, 2002 AT 1:30 P.M.

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to amend Regulation 1616, Federal Areas, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on February 5, 2003. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by February 5, 2003.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law, Revenue and Taxation Code section 6352, provides that the gross receipts from the sale of, or the storage, use or other consumption of tangible personal property are exempt from tax where the Constitution or laws of the United States or the Constitution of this State prohibit the imposition of tax.

Regulation 1616, Federal Areas, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6352. Amendments are proposed to provide that Indian retailers are not required to collect use tax upon on-reservation sales to non-Indians and Indians who do not reside on a reservation, of tangible personal property

that is (1) intended for use in relation to on-reservation gaming activities, as defined; (2) promotes on-reservation gaming activities, as defined; (3) is made from raw materials produced on the reservation; (4) reflects or illustrates tribal history, culture or tradition; (5) is intended for use in an on-reservation activity; or (6) is not generally available for purchase outside of a reservation.

#### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed amendments and regulations do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulations will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

#### EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the adoption of the amendment to Regulation 1616 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendment to this regulation and the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The proposed regulations may affect small business.

#### COST IMPACT ON PRIVATE PERSON OR BUSINESSES

That Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

#### FEDERAL REGULATIONS

Regulation 1616 and the proposed changes have no comparable federal regulations.

#### AUTHORITY

Section 7051, Revenue and Taxation Code.

## REFERENCE

Section 6352, Revenue and Taxation Code.

## CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Mariflor Jimenez (916) 324-2952, at 450 N Street, Sacramento, CA 95814, e-mail [Mariflor.Jimenez@boe.ca.gov](mailto:Mariflor.Jimenez@boe.ca.gov) or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or Ms. Karen Anderson, Contribution Disclosures Analyst, telephone (916) 327-1798, e-mail [Karen.Anderson@boe.ca.gov](mailto:Karen.Anderson@boe.ca.gov) or by mail at State Board of Equalization, Attn: Diane Olson or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

## ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

## ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with the law, adopt the proposed regulations if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

STATE BOARD OF EQUALIZATION

Deborah Pellegrini, Chief  
Board Proceedings Division

**Regulation 1616. FEDERAL AREAS.**

**(a) IN GENERAL.** Tax applies to the sale or use of tangible personal property upon Federal areas to the same extent that it applies with respect to sale or use elsewhere within this state.

**(b) ALCOHOLIC BEVERAGES.** Manufacturers, wholesalers and rectifiers who deliver or cause to be delivered alcoholic beverages to persons on Federal reservations, shall pay the state retailer sales tax on the selling price of such alcoholic beverages so delivered, except when such deliveries are made to persons or organizations which are instrumentalities of the Federal Government or persons or organizations which purchase for resale.

Sales to officers' and non-commissioned officers' clubs and messes may be made without sales tax when the purchasing organizations have been authorized, under appropriate regulations and control instructions, duly prescribed and issued, to sell alcoholic beverages to authorized purchasers.<sup>1</sup>

**(c) SALES THROUGH VENDING MACHINES.** Sales through vending machines located on Army, Navy, or Air Force installations are taxable unless the sales are made by operators who lease the machines to exchanges of the Army, Air Force, Navy, or Marine Corps, or other instrumentalities of the United States, including Post Restaurants and Navy Civilian Cafeteria Associations, which acquire title to and sell the merchandise through the machines to authorized purchasers.

For the exemption to apply, the contracts between the operators and the United States instrumentalities and the conduct of the parties must make it clear that the instrumentalities acquire title to the merchandise and sell it through machines leased from the operators to authorized purchasers.

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<sup>1</sup>The following is a summary of the pertinent regulations which have been issued:

(a) **General.** Air Force Regulation 34-57, issued under date of February 9, 1968, Army Regulation 210-65, issued under date of May 4, 1966, and Navy General Order No. 15, issued under date of May 5, 1965, authorize the sale and possession of alcoholic beverages at bases and installations subject to certain enumerated restrictions.

(b) **Air Force.** Air Force Regulation 34-57, Paragraph 5, permits commissioned officers' and noncommissioned officers' open messes, subject to regulations established by commanders of major air commands to sell alcoholic beverages to authorized purchasers at bars and cocktail lounges, and provides that commanders will issue detailed control instructions. Paragraph 8 and 9 require commanders of major air commands to issue regulations relative to package liquor sales and to procurement of alcoholic beverages, respectively.

(c) **Army.** Army Regulation 210-65, Paragraph 9, provides that major commanders are authorized to permit at installations or activities within their respective commands the dispensing of alcoholic beverages by the drink or bottle. Paragraph 11 of AR 210-65 provides that when authorized by major commanders as prescribed in Paragraph 9, AR 210-65, officers' and non-commissioned officers' open messes may, subject to regulations prescribed by the commanding officer of the installation or activity concerned, dispense alcoholic beverages by the drink, and operate a package store.

(d) **Navy.** Navy General Order No. 15 provides that commanding officers may permit, subject to detailed alcoholic beverage control instructions, the sales of packaged alcoholic beverages by officers' and noncommissioned officers' clubs and messes and the sale and consumption of alcoholic beverages by the drink in such clubs and messes.

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

**(d) INDIAN RESERVATIONS.**

(1) IN GENERAL. Except as provided in this regulation, tax applies to the sale or use of tangible personal property upon Indian reservations to the same extent that it applies with respect to sale or use elsewhere within this state.

(2) DEFINITIONS. For purposes of this regulation "Indian" means any person of Indian descent who is entitled to receive services as an Indian from the United States Department of the Interior. Indian organizations are entitled to the same exemption as are Indians. "Indian organization" includes Indian tribes and tribal organizations and also includes partnerships all of whose members are Indians. The term includes corporations organized under tribal authority and wholly owned by Indians. The term excludes other corporations, including other corporations wholly owned by Indians. "Reservation" includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.

**(3) SALES BY ON-RESERVATION RETAILERS.**

**(A) Sales by Indians.**

1. Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Except as exempted below, or as expressly preempted by federal statute, regulation or policy, Indian retailers are required to collect use tax from such purchasers and must register with the Board for that purpose:

a. Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation;

b. Indian retailers are not required to collect use tax on the sale of tangible personal property sold on a reservation, without regard to the origin of such tangible personal property, if the tangible personal property is intended for use in on-reservation gaming activities, or to advertise or promote patronage of a tribal gaming facility through the display of the facility's or the tribe's name, logo or other identifying information;

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The proposed amendments contained in this document may not be adopted. Any amendments that are adopted may differ from this text.

c. Indian tribes/Indian retailers are not required to collect use tax on the sale of tangible personal property sold on a reservation if the property a) is made from raw materials produced on the reservation, b) reflects or illustrates tribal history, culture or tradition, c) is intended for use in an on-reservation activity, or d) is not generally available for purchase outside of a reservation.

**(B) Sales by non-Indians.**

1. Sales by non-Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by retailers when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on a reservation. The sale is exempt whether the retailer is a federally licensed Indian trader or is not so licensed. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

2. Sales by non-Indians to non-Indians and Indians who do not reside on a reservation. Either sales tax or use tax applies to sales of tangible personal property by non-Indian retailers to non-Indians and Indians who do not reside on a reservation.

**(C) Resale Certificates.** Persons making sales for resale of tangible personal property to retailers conducting business on an Indian reservation should obtain resale certificates from their purchasers. If the purchaser does not have a permit and all the purchaser's sales are exempt under paragraph (d)(3)(A) of this regulation, the purchaser should make an appropriate notation to that effect on the certificate in lieu of a seller's permit number (see Regulation 1668, "Resale Certificates").

**(4) SALES BY OFF-RESERVATION RETAILERS.**

**(A) Sales Tax - In General.** Sales tax does not apply to sales of tangible personal property made to Indians negotiated at places of business located outside Indian reservations if the property is delivered to the purchaser and ownership to the property transfers to the purchaser on the reservation. Generally ownership to property transfers upon delivery if delivery is made by facilities of the retailer and ownership transfers upon shipment if delivery is made by mail or carrier. Except as otherwise expressly provided herein, the sales tax applies if the property is delivered off the reservation or if the ownership to the property transfers to the purchaser off the reservation.

**(B) Sales Tax - Permanent Improvements - In General.** Sales tax does not apply to a sale to an Indian of tangible personal property (including a trailer coach) to be permanently attached by the purchaser upon the reservation to realty as an improvement if the property is delivered to the Indian on the reservation. A trailer coach will be regarded as having been permanently attached if it is not registered with the Department of Motor Vehicles. Sellers of property to be permanently attached to realty as an improvement should secure exemption certificates from their purchasers (see Regulation 1667, "Exemption Certificates").

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**(C) Sales Tax - Permanent Improvements - Construction Contractors.**

1. Indian contractors. Sales tax does not apply to sales of materials to Indian contractors if the property is delivered to the contractor on a reservation. Sales tax does not apply to sales of fixtures furnished and installed by Indian contractors on Indian reservations. The term “materials” and “fixtures” as used in this paragraph and the following paragraph are as defined in Regulation 1521 “Construction Contractors.”

2. Non-Indian contractors. Sales tax applies to sales of materials to non-Indian contractors notwithstanding the delivery of the materials on the reservation and the permanent attachment of the materials to realty. Sales tax does not apply to sales of fixtures furnished and installed by non-Indian contractors on Indian reservations.

**(D) Use Tax - In General.** Except as provided in paragraphs (d)(4)(E) and (d)(4)(F) of this regulation, use tax applies to the use in this state by an Indian purchaser of tangible personal property purchased from an off-reservation retailer for use in this state.

**(E) Use Tax - Exemption.** Use tax does not apply to the use of tangible personal property (including vehicles, vessels, and aircraft) purchased by an Indian from an off-reservation retailer and delivered to the purchaser on a reservation unless, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.

**(F) Leases.** Neither sales nor use tax applies to leases otherwise taxable as continuing sales or continuing purchases as respects any period of time the leased property is situated on an Indian reservation when the lease is to an Indian who resides upon the reservation. In the absence of evidence to the contrary, it shall be assumed that the use of the property by the lessee occurs on the reservation if the lessor delivers the property to the lessee on the reservation. Tax applies to the use of leased vehicles registered with the Department of Motor Vehicles to the extent that the vehicles are used off the reservation.

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